

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

**KENDALL G. CAMPBELL v. KEVIN MYERS, WARDEN and
STATE OF TENNESSEE**

**Appeal from the Circuit Court for Wayne County
No. 13724 Robert Holloway, Judge**

No. M2005-01942-CCA-R3-HC - Filed March 31, 2006

The Petitioner, Kendall G. Campbell, appeals from the order of the trial court dismissing his petition for habeas corpus relief. The State has filed a motion requesting that this Court affirm the trial court's denial of relief pursuant to Rule 20, Rules of the Court of Criminal Appeals. The petition fails to establish a cognizable claim for habeas corpus relief. Accordingly, the State's motion is granted and the judgment of the trial court is affirmed.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed Pursuant
to Rule 20, Tenn. Ct. Crim. App. R.**

DAVID H. WELLES, J., delivered the opinion of the court, in which JERRY L. SMITH and ROBERT W. WEDEMEYER, JJ., joined.

Kendall G. Campbell, Clifton, Tennessee, Pro Se.

Paul G. Summers, Attorney General and Reporter; Elizabeth Bingham Marney, Assistant Attorney General, for the appellee, State of Tennessee.

MEMORANDUM OPINION

According to the petition for writ of habeas corpus contained in the record, the Petitioner, Kendall G. Campbell, pleaded guilty to and was convicted of one count of criminal responsibility for attempted aggravated robbery and one count of criminal responsibility for aggravated assault. Pursuant to a plea agreement, the Petitioner received an effective sentence of ten years, to be served in split confinement. Following revocation of his probation, the Petitioner alleges he is currently serving his sentence in the Department of Correction. The convictions were entered on September 14, 1999.

On March 14, 2005, the Petitioner filed a petition for writ of habeas corpus. In this petition he alleged that his convictions are void because criminal responsibility for attempted aggravated

robbery is not a lesser included offense of his indicted charge of attempted aggravated robbery. He also alleges that his conviction for criminal responsibility for aggravated assault is void because aggravated assault is not a lesser included offense of his indicted offense for attempted first degree murder. The State filed a motion requesting the trial to dismiss the petition for habeas corpus relief. The trial court granted the State's motion. It is from the order dismissing the petition for habeas corpus relief that the Petitioner appeals.

Article 1, section 15 of the Tennessee Constitution guarantees the right to seek habeas corpus relief and Tennessee Code Annotated sections 29-21-101 et seq. codify the applicable procedures for seeking a writ. However, the grounds upon which our law provides relief are very narrow. Taylor v. State, 995 S.W.2d 78, 83 (Tenn. 1999). Habeas corpus relief is available in Tennessee only when it appears upon the face of the judgment or the record of the proceedings upon which the judgment is rendered that (1) the convicting court was without jurisdiction or authority to sentence a defendant; or (2) the defendant's sentence has expired. Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993). Thus, the grounds upon which habeas corpus relief will be granted are very narrow. State v. Ritchie, 20 S.W.3d 624, 630 (Tenn. 2000). It is permissible for a trial court to summarily dismiss a petition for habeas corpus relief, without the appointment of counsel and without an evidentiary hearing, if there is nothing on the face of the judgment to indicate that the convictions addressed therein are void. Passarella v. State, 891 S.W.2d 619 (Tenn. Crim. App. 1994), superceded by statute as stated in State v. Steven S. Newman, No. 02C01-9707-CC-00266, 1998 WL 104492, at *1 n. 2 (Tenn. Crim. App., at Jackson, Mar. 11, 1998).

We first note that the judgments of conviction reflect that the guilty pleas were entered to amended charges of criminal responsibility for attempted aggravated robbery and criminal responsibility for aggravated assault. Although the Petitioner alleges that the trial court did not have jurisdiction to amend the charges to include the offenses to which he pled guilty, we find nothing in the record to suggest why the trial court would be without jurisdiction to amend the charges.

In addition, we note that criminal responsibility is not a separate offense in and of itself, but is simply a theory by which the State may hold a defendant liable for a principal offense committed by another. See State v. Lemacks, 996 S.W. 2d 166, 173 (Tenn. 1999). An indictment that charges an accused with the principal offense includes all the "nuances of the offense" including criminal responsibility for the crime. See id. Thus, it is simply not necessary that an indictment charge criminal responsibility for the indicted offense.

In addition to arguing that the petition has no merit, the State also argues that the judgment of the trial court should be affirmed because the Petitioner failed to comply with the mandatory requirements of the habeas corpus statute. See Tenn. Code Ann. § 29-21-107. The State is correct. The Petitioner failed to state whether this was his first application for the writ of habeas corpus and the Petitioner failed to state whether the legality of his restraint has already been adjudged in a prior proceeding of the same character. Our supreme court has recently confirmed that the procedural requirements are mandatory and must be followed scrupulously. See Hickman v. State, 153 S.W.

3d 16, 21 (Tenn. 2004). A habeas corpus court may properly choose to dismiss a petition for failing to comply with the statutory procedural requirements. Id.

The Petitioner's judgments of conviction are valid upon their face. The sentence of confinement has not expired. Because the petition, along with the attachments, failed to state a cognizable claim for habeas corpus relief and failed to comply with the procedural requirements of our law, we conclude that the trial court properly dismiss the petition without a hearing and without appointing counsel. Accordingly, the State's motion is granted. The judgment of the trial court is affirmed in accordance with Rule 20 of the Rules of the Court of Criminal Appeals of Tennessee.

DAVID H. WELLES, JUDGE